HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting)

(Chapter VIII Rule 32 (2) (b)

Description of the case.

WPMS No. 384/05

Nagar Palika Parishad, Haridwar

Vs.

Somdutt Goswami and others.

Approved for reporting

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~~Not approved for reporting~~

Date of decision 25.07.2006

Initial of Judge

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO. 384 (MS) OF 2005

Nagar Palika Parishad,
Haridwar, through its Executive Officer. ..... Petitioner.

Versus

1. Somdutt Goswami, S/o Sri Chandi Prasad Goswami, R/o Vishnu Ghat, Haridwar.
2. Civil Judge (Junior Division), Haridwar.

.....Respondents.

Hon'ble Rajesh Tandon, J.

Heard Sri Pankaj Miglani, Advocate for the petitioner and Mr. Yogesh Sharma, Advocate for the respondent.

By the present writ petition, the petitioner has prayed for a writ of certiorari quashing the order dated 8th Febrauary 2005 .

Briefly stated, the suit was filed by the plaintiff/respondent for damages to the extent of Rs. 20,000/- on the ground that defendant has damaged the property of the plaintiff as a result of which the articles have been damaged.

The petitioner has filed a written statement on 12th December, 2004.

The copy of the order sheet dated 8th February, 2005 shows that the suit has been filed on 9th August, 2004 and the summons were served on 13th August, 2004 and the written statement was required to be filed by 14th December, 2004 and as such the court has taken the view that since the same has not been filed within 90 days from the filing of the summons, which were received by the defendants and therefore, the same shall not to taken in the evidence. However, the same has already been filed and has been taken on the record.

The plaintiff has filed an application under Order VIII Rule 1 of the Code of Civil Procedure stating therein that the written statement may not be treated as an evidence in the case. The objections have been filed by the petitioners stating that the same has been filed and has been taken on the record.

Order VIII Rule 1 of the Code of Civil Procedure has been held to be directory in the judgment of ***Kailash Vs. Nanhku and others 2005 AIR SCW 2346.*** Paragraphs No. 28 and 30 of the aforesaid judgment are quoted below:-

"28. In the State of Punjab and another v. Shamlal Murari and another (1976) 1 SCC 719, the Court approved in no unmistakable terms the approach of moderating into wholesome directions what is regarded as mandatory on the principle that "prosessual law is not to be a tyrant but a servant, not an obstruction but an aid to justice. Procedural prescriptions are the handmaid and not the mistress, a lubricant, not a resistant in the administration of justice." Ghanshyam Dass and others v. Dominion of India an others, (1984) 3 SCC 46, the Court reiterated the need for interpreting a part of the adjective law dealing with procedure alone in such a manner as to subserve and advance the cause of justice rather than to defeat it as all the laws of procedure are based on this principle.

30. In Sangram singh v. Election Tribunal Kotah & another, (1955) 2 SCR 1, this Court highlighted 3 principles while interpreting any portion of the CPC. They are:

(i) A code of procedure must be regarded as such. It is 'procedure' some thing designed to facilitate justice and further its ends: not a penal enactment for punishment and penalties: not a thing designed to trip people up. Too

technical a construction of sectiona that leaves no room for reasonable elasticity of interpretation should therefore be guarded against (provided always that justice is done to 'both' sides) lest the very means designed for the furtherance of justice be used to frustrate it.

(ii) There must be ever present to the mind the fact that our laws of procedure are grounded on a principle of natural justice which requires that men should not be condemned unheard, that decisions should not be reached behind their backs, that proceedings that affect their lives and property should not continue in their absence and that they should not be precluded from participating in them. Of course, there must be exceptions and where they are clearly defined they must be given effect to.

(iii) No forms or procedure should ever be permitted to exclude the presentation of the litigant's defence unless there be an express provision to the contrary."

Similar view has been takenin ***Vidyawati Gupta v. Bhakti Hari Nayak (2006) 2 Supreme Court Cases 777,*** where relying has been placed on the judgment of ***Kailash Vs. Nanhku (2005) 4 SCC 480***. Relevant portion is quoted below:-

"In this regard, a reference was made to the decision of this Court in Sk. Salim Haji Abdul Khayumsab v. Kumar (2006) 1 SCC 46 wherein the provisions of Order 8 Rule 1, after amendment, were held to be directory on the reasoning that rules of procedure ore handmaids of justice and while the language employed by the draftsman of processual law may be liberal or stringent, the fact remains that the object of prescribing procedure is to advance the cause of justice.

Reference was also made to the decision of this Court in Kailash v. Nankhu (2005) 4 SCC 480 wherein also while considering the amended provisions of Order 8 Rule 1 of the Code of this Court held that unless compelled by express and specific language of he statute the provisions of the Code of any other procedural enactment ought not to be construed in a manner which would leave the Court helpless to; meet extraordinary situations in the ends of justice. This Court went on to hold that merely because the provision of law is couched in negative language implying a mandatory character, the same is not without exceptions and that the directions contained regarding the period for filing written statement in Order 8 Rule 1 of the Code was directory and not mandatory being procedural law."

I have also taken a view that the provision of Order VIII Rule 10 of the Code of Civil Procedure is not mandatory and the Court has power to condone the delay in view of the law laid down by the Apex Court in the aforesaid case.

A writ of certiorari is issued quashing the orders dated 08.02.2005 passed by the learned Civil Judge (Junior Division), Haridwar in O.S. No. 217/2004 (Annexure No. 6 to the writ petition).

The trial Court is directed to accept the written statement filed by the petitioner as evidence and then proceed with the case.

Writ petition is allowed. No order as to costs.

(Rajesh Tandon, J.)

25.07.2006
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